

The Americans with Disabilities Amendment Act (ADA) and Reasonable Accommodations

Introduction:

The Americans with Disabilities Act of 1990 (ADA) is designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

ADA does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities.

ADA establishes a process where the employer assesses a disabled individual's ability to perform the essential functions of the specific job held or desired. ADA does not relieve a disabled employee or applicant from the obligation to perform the essential functions of the job.

When an individual's functional limitation impedes such job performance, the employer must take steps to reasonably accommodate the individual, unless to do so would impose an undue hardship. These accommodations may be adjustments to the way a job customarily is performed or to the work environment itself.

This process should be flexible, and should involve both the employer and the individual with a disability. The determination of whether an individual is qualified for a particular position must necessarily be made on a case-by-case basis. No specific form of accommodation is guaranteed for all individuals with a particular disability.

An individual with a disability under the ADA is a person who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

Reasonable Accommodation is defined as a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified individual with a disability to enjoy an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average

similarly-situated employee without a disability. ADA requires reasonable accommodation in three aspects of employment:

- to ensure equal opportunity in the application process;
- to enable a qualified individual with a disability to perform the essential functions of a job; and
- to enable an employee with a disability to enjoy equal benefits and privileges of employment.

Examples of Reasonable Accommodation:

- restructuring a job by reallocating or redistributing marginal job functions;
- changing when or how an essential job function is performed;
- obtaining or modifying equipment or devices;
- modifying examinations, training materials or policies;
- providing qualified readers and interpreters;
- reassigning an employee to a vacant position; or
- allowing an employee to provide equipment or devices that an employer is not required to provide.

Requests for a Reasonable Accommodation:

An applicant can make a request for reasonable accommodations:

- 1) When contacted by the Office of Human Resources Recruiter and informed of the opportunity to participate in an interview at the *pre-employment job offer phase*; and
- 2) When the position has been offered, at the *post-conditional job offer phase*, and during the medical examination phase.

Examples of a pre-employment job offer phase:

- An applicant is called for an interview and needs assistance in effectively responding during the interview by, perhaps, having a sign language interpreter;
- An applicant requests that any written materials be provided in Braille;
- An applicant requests that the interview be in an accessible location.

Examples of a post-conditional offer phase:

- An applicant requests a reasonable accommodation to effectively perform the job.

How an Applicant Requests a Reasonable Accommodation:

An applicant should indicate that they need an accommodation to the HR Recruiter. The Recruiter will contact the County's Disability Program Manager for assistance.

At the post-conditional offer phase, an applicant should make the request on a Medical History Form or at the completion of the physical examination.

At either point, a determination will be made whether the request can be granted, or will be denied.

An employee may make a request for reasonable accommodation at any point during the course of employment with the County.

An employee can make a request for reasonable accommodation by:

- 1) speaking to their supervisor,
- 2) contacting the County's Disability Program Manager, or
- 3) completing the ADA Reasonable Accommodation Request Form which is found on the Office of Human Resources' webpage.

What happens once the request is made?

Once the request is made, the individual with the disability is contacted by the Disability Program Manager to engage in the "interactive process". The interactive process is the time where the Disability Program Manager and individual discuss the request and identify what types of reasonable accommodations may be effective in removing the workplace barriers of a particular job.

How is a reasonable accommodation identified?

A review of the individual's particular job classification specification is performed to capture the essential functions. The essential functions are then paired with the limitations of the individual's disability. After this, the specific request is considered for "reasonableness" by the employer and employee. If the request is "reasonable" and effectively removes the workplace barriers, the employee or applicant's preferred request can be selected.

If, however, the request is not reasonable or effective, the Disability Program Manager determines the type of reasonable accommodation to be applied as the accommodation.

What if the accommodation offered is not what the applicant or employee requested?

The law does not require that the employee or applicant to receive the specific accommodation requested but rather an accommodation that is effective and reasonable.

What difference does it make if the disability is obvious or not?

It makes a big difference. An individual with an obvious disability may not be required to show medical documentation of their condition; while, an individual with a chronic, non-obvious medical condition will need to make their disability known to their employer, through medical documentation, if they are requesting a reasonable accommodation.

Some examples of obvious disabilities:

- Blindness
- Deafness
- Wheelchair Bound

Some examples of chronic non-obvious disabilities:

- Diabetes
- Sickle Cell Disease
- Cancer
- Bi-polar disorder

How is a reasonable accommodation implemented?

Once the appropriate reasonable accommodation has been identified and selected, a recommendation in the form of a memorandum from the County Disability Program Manager is sent to the hiring or employing department for implementation.

Who pays for a reasonable accommodation?

An augmentative or adaptive device like voice-activated software may have to be purchased before implementation. Depending on the type of reasonable accommodation, the hiring or employing department pays up-to \$500.00 of the cost and the County Office of Human Resources may pay for the remaining portion.

Can a reasonable accommodation be denied?

The ADA requires that an employer may deny a reasonable accommodation if providing such an accommodation would create “undue hardship” to the employer. An undue hardship is action that requires a significant difficulty or expense in relation to the size of the employer, the resources available and the nature of the operation.

An undue hardship is defined by the ADA is an action that is:

- a) unduly costly;
- b) extensive;
- c) substantial;
- d) disruptive; or
- e) fundamentally alters the nature or operation of the business.

Appeals Process for Reasonable Accommodation

Montgomery County Government allows an appeal to the OHR Director through the County’s Office of Human Resources, and ultimately to the County’s Chief Administrative Officer if an applicant or an employee is denied a request for a reasonable accommodation.

A letter of appeal should include: a) the type of reasonable accommodation requested; and, b) the rationale for the request. The OHR Director, in consultation with the Disability Program Manager, will discuss and review the elements of the request in order to render an equitable decision that fairly balances both the rights as an applicant or employee and the County position’s as the employer. After review and discussion, the OHR Director will issue a decision on the appeal.

If the applicant or employee wants to appeal the OHR Director’s decision, they may write a letter of appeal to the County’s Chief Administrative Officer (CAO). This letter should include: a) the reason for disagreeing with the OHR Director’s decision regarding the appeal for a reasonable accommodation; b) the type of reasonable accommodation being requested; and, c) the rationale for the request for a reasonable accommodation.

The CAO will make a final decision on the appeal and will provide the decision to the applicant or employee in a memorandum format.

Contact Information for questions:

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